IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 850 of 1985

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 : NO

VINUBHAI K RAJPUT

Versus

RATILAL G MODI SINCE DECD. THRO HIS HEIRS AND LEG.REP.

Appearance:

1. Civil Revision Application No. 850 of 1985

MR JV DESAI for Petitioner No. 1

MR DD VYAS for Respondent No. 1-Deceased

Respondents Nos. 1/1-1/3-Served

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/09/2002

ORAL JUDGEMENT

This Revision Application preferred under Section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates

Control Act, 1947 [hereinafter referred to as, "the Rent Act"], arises from the judgment and order dated 19th March, 1985 passed by the learned Assistant Judge, Valsad in Regular Civil Appeal No. 62 of 1983. The petitioner before this Court is the Respondent-Defendant.

The respondent herein [hereinafter referred to as "the Plaintiff"] instituted Regular Civil Suit No. 59 of 1977 in the court of Civil Judge [JD], Gandevi, inter alia, for recovery of possession of the suit premises and arrears of rent. The plaintiff claimed that he was the owner of the suit premises being a residential house bearing Municipal House No. 587, situated at Gauhar Baug, Bilimora. The suit premises was leased to the defendant for a monthly rent of Rs. 15/=. The agreed rent of the suit premises was Rs. 15/= per month. In a previous proceedings being Standard Rent Application No. 58 of 1967, the standard rent of the suit premises was determined at Rs. 15/= per month. The defendant was in arrears of rent since 1st April, 1974. The defendant had not made payment of amount of arrears of rent within one month from the date of receipt of the suit notice [Exh. 20]; that the land appurtenant to the suit premises was not leased to the defendant, however, the defendant had sublet the said land and had permitted third persons to park their vehicles and the defendant was charging rent for parking such vehicles. The suit was contested by the defendant by filing written statement Exh. 12. The defendant denied that the open land appurtenant to the suit premises was not leased to the defendant. The defendant also asserted that he had been paying the rent regularly. However, since the plaintiff was not residing in the same town, it was not possible to remit the amount of rent regularly. That the defendant had deposited entire amount of arrears of rent in the Court.

The trial Court under the judgment and order dated 21st March, 1983 recorded a finding that the standard rent of the suit premises [i.e., Rs. 15/= per month] was determined in the previous proceedings; that the defendant was in arrears of rent since 1st February, 1976; that the defendant had failed to pay the amount of arrears of rent within one month from the date of receipt of the notice. In respect of the open land, the trial Court did not believe that the open land appurtenant to the residential house was not given on rent to the defendant or that the defendant was using the said land for permitting others to park their vehicles for monetary consideration. The trial Court, however, held that though the defendant was in arrears of rent since 1st February, 1976, the plaintiff had claimed such rent from

1st April, 1974. Thus, under the suit notice, the plaintiff had made a greater demand of rent than due. The suit notice was, therefore, illegal and invalid. The suit based on such invalid notice was not maintainable. The court, therefore, dismissed the suit.

Feeling aggrieved, the plaintiff preferred Regular Civil Appeal No. 62 of 1983 before the District Court, Valsad. The learned Assistant Judge, Valsad under the impugned judgment dated 19th March, 1985 was pleased to confirm the finding that the defendant was the tenant in arrears of rent for six months and more. The appellate Court, however, held that the defendant was in arrears of rent from 16th January, 1976 and not from 1st April, 1974 as claimed by the plaintiff or 1st February, 1976 as decided by the trial Court. The appellate court also confirmed the finding that the defendant failed to pay amount of arrears of rent to the plaintiff within one month from the date of receipt of the suit notice. The appellate court, however, was of the opinion that though there was a greater demand in the suit notice then due, the suit notice could not be said to be illegal or invalid. The appellate court, therefore, passed the decree for possession of the suit premises and the arrears of rent. Feeling aggrieved, the defendant has preferred the present Revision Application.

Both the courts below have recorded a concurrent finding that the standard rent of the suit premises was determined in the earlier proceedings viz., Standard Rent Application No. 58 of 1967; that on the date of the suit notice, the defendant was in arrears of rent for six months and more; that the defendant neglected to pay the amount of arrears of rent within one month from the date of receipt of the suit notice. There being no dispute as regards the standard rent, in view of these concurrent findings, the defendant was liable to be evicted from the suit premises.

The only question that arise for my consideration is whether the suit notice can be said to be legal and valid as held by the appellate court or should it be said to be illegal and invalid as held by the trial Court. The only reason why the trial Court held the suit notice to be illegal and invalid was that the plaintiff had demanded arrears of rent from 1st April, 1974 while in fact, the defendant was found to be in arrears of rent since 1st February, 1976. Should the suit notice be held to be illegal because what was demanded under the suit notice was found to be more than what was actually due. The question is squarely answered by this court in the

matter of Labhabhai Vithaldas v. Laxmidas Vithaldas [4 GLR p-567]. While considering a similar issue, this Court has held thus, "..It is true that the expression "standard rent" is defined in sub-section (10) of sec. 5 of the Act, which has been quoted above, but the wording of sub-section (2) of sec. 12 does not mean that that amount should be specified in the notice given under sub-sec. (2), because as I have already stated, there can be a dispute as regards the standard rent also as regard the period during which the amount has not been paid. Merely because there are such disputes a notice given under sub-section (2) of sec. 12 of the Act would not become invalid, so as to take away the right of the landlord to initiate a suit one month after the notice.." Similar is the view expressed in the matter of Modi Mohanlal Bhagwandas & Anr. v. Shah Keshavlal Jethalal [8 GLR 815]. In the said matter, the lower appellate court held that, "..Therefore, if the landlord were to demand something more than the standard rent or permitted increases, the notice would be a notice contrary to the provision of sec. 12 (2) and since the tenant was not bound to comply with such an illegal notice, the suit instituted against the tenant was bad for want of valid notice under sec. 12 (2) of the Act." This Court disagreeing with the above finding of the lower appellate court held that, ".. I find it difficult to agree with the learned Judge in his conclusion. Merely because in the notice a claim for a larger amount than the standard rent and permitted increases is made, the notice would not be rendered illegal. What is intended by the Legislature by providing for giving of a notice is that the tenant must know what was demanded from him and if the notice made it clear that he was demanding also the standard rent and the permitted increases, the notice would comply with the requirements of sec. 12 (1). [It should be section 12 (2)]. It may be that if by the notice, any amount is claimed which is beyond the amount of the arrears of standard rent and permitted increases, the plaintiff may not be entitled to recover that amount ultimately if he were to file a suit to recover such an amount. ... ..It is not possible to interpret this provision of law to mean that, in any case where the demand exceeds the actual amount of standard rent and permitted increases, the notice would be rendered illegal if such a demand is in excess of such standard rent or permitted increases which may ultimately be held to be the standard rent or permitted increase." Similar is the view expressed by this court in the matter of Panchal Mohanlal Ishwardas v. Maheshwari Mills Limited [3 GLR 574].

In view of the above decisions, the suit notice cannot be said to be illegal or invalid merely because it made a demand of arrears of rent from 1st April, 1974 whereas ultimately it was found that such rent was due from 16th January, 1976 and not from 1st April, 1974.

If the suit notice is held legal and valid, as recorded hereinabove, the decree for eviction should necessarily follow as envisaged in section 12 (3)(a) of the Rent Act. In my view, therefore, the lower appellate court cannot be said to have erred in passing the decree for possession against the defendant.

The Revision Application is dismissed with costs. Rule is discharged. Interim stay is vacated.

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{Ms. R.M Doshit, J.}

Prakash*